

NO JS-6

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

11 BILLY G. ERVIN, JR., ) Case No. CV 11-03243 DDP (FFMx)  
12 Plaintiff, )  
13 v. ) **ORDER GRANTING DEFENDANTS' MOTION**  
14 CITY OF LOS ANGELES, ) **FOR SUMMARY JUDGMENT**  
15 CALIFORNIA, a government )  
16 entity; CITY OF LOS ANGELES )  
17 POLICE DEPARTMENT, a ) [Motion filed on 8/13/2012]  
18 government entity, )  
19 Defendants. )  
20 \_\_\_\_\_ )  
21  
22

23 Presently before the court is Defendants' unopposed Motion for  
24 Summary Judgment. Having considered the submissions of the  
25 Defendants, the court grants the motion and adopts the following  
26 order.

27 **I. Background**

28 On July 22, 2009 Plaintiff Billy G. Ervin, Jr. ("Ervin" or  
29 "Plaintiff") was at Jesse Owens Park with his family and friends.  
30 (Compl. ¶¶ 10-11.) At approximately 7:00 p.m. the group was  
31 approached by several City of Los Angeles Police Department  
32 ("LAPD") officers. (Compl. ¶¶ 10, 12.) Plaintiff alleges that the

1 officers physically grabbed and restrained him without provocation  
2 and/or justification . (Compl. ¶ 12.) After Ervin questioned why  
3 he was being restrained, he was handcuffed and beaten by several of  
4 the officers. (Compl. ¶ 13.) As a result of this incident Ervin  
5 sustained multiple injuries and Plaintiff continues to suffer from  
6 emotional trauma, which he treats with psychological therapy.  
7 (Compl. ¶¶ 14-15.)

8 Plaintiff filed this civil rights suit against Defendants City  
9 of Los Angeles and City of Los Angeles Police Department  
10 ("Defendants")<sup>1</sup>. Plaintiff alleges seven causes of action against  
11 Defendants: 1) violation of California Civil Code §§ 52 and 52.1;  
12 2) assault and battery/excessive force; 3) false arrest/false  
13 imprisonment; 4) negligence; 5) conspiracy; 6) negligent infliction  
14 of emotional distress; and 7) intentional infliction of emotional  
15 distress.

16 Defendants now move for summary judgment or partial summary  
17 judgment based Plaintiff's failure to produce any evidence or to  
18 state facts sufficient to support the claims.

19 **II. Legal Standard**

20 The court shall grant summary judgment if the movant shows  
21 that there is no genuine dispute as to any material fact and the  
22 movant is entitled to judgment as a matter of law. Fed. R. Civ. P.  
23 Section 56(a); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248,  
24 106 S. Ct. 2505, 2510 (1986). When the nonmoving party fails to  
25 respond to the motion, the moving party still must meet their  
26 burden to show there is no genuine issue as to any material fact.

27  
28 

---

<sup>1</sup> The Complaint does not name any individual defendants.

1 Martinez v. Stanford, 323 F.3d 1178, 1182 (9th Cir. 2003); Henry v.  
 2 Gill Industries, Inc., 983 F.2d 943, 950 (9th Cir. 1993). The  
 3 court therefore reviews an unopposed summary judgment motion to  
 4 determine whether "the movant's papers are themselves insufficient  
 5 to support a motion for summary judgment or on their face reveal a  
 6 genuine issue of material fact." Id. at 949 (quoting Hamilton v.  
 7 Keystone Tankship Corp., 539 F. 2d 684, 686 n. 1 (9th Cir. 1976)).  
 8 A moving party's burden may be satisfied by stating the nonmoving  
 9 party has failed to produce evidence of a genuine issue of material  
 10 fact. Fonseca v. City of Fresno, 2012 WL 44041, at \*11 (E.D. Cal.  
 11 Jan. 9, 2012) (granting defendant summary judgment on the matter  
 12 regarding policy to disregard a mental illness because Plaintiff  
 13 failed to produce any evidence of a policy, practice or custom).

14 **III. Discussion**

15 Defendants argue that Plaintiff cannot prove any of his claims  
 16 because he has not produced any evidence to support those claims.  
 17 (Motion at 3). Defendants support their motion by pointing to  
 18 Plaintiff's failure to respond to Requests for Production,  
 19 Interrogatories and Requests for Admissions, and Plaintiff's  
 20 failure to appear for the deposition. (Shahandeh Decl. ¶¶ 3-5.)

21 Plaintiff's first cause of action is for Violation of  
 22 California Civil Code §§ 52 and 52.1<sup>2</sup>. Plaintiff must prove a  
 23 violation of his constitutional right through threats, intimidation  
 24 or coercion or attempts to interfere by threats, intimidation or

---

26 <sup>2</sup>All of Plaintiff's causes of action are state law claims.  
 27 Plaintiff originally filed his complaint in the Superior Court of  
 28 California. Defendants removed to this court because the only  
 named Defendants are municipal entities, which may only be liable  
 under 42 U.S.C. § 1983.

1 coercion. Cal. Civ. Code § 52.1. Plaintiff has not responded to  
2 interrogatories seeking descriptions of, nor has he provided any  
3 other evidence of, such force. To the extent that an alleged  
4 violation of a right is inherently coercive, that coercion is  
5 insufficient to meet the statutory requirements of Section 52.1,  
6 which requires a showing of an independent threat or coercive act.

7 Shoyoye v. County of Los Angeles, 203 Cal.App.4th 947, 959.  
8 Section 52 penalizes certain discriminatory actions. Plaintiff has  
9 not, however, demonstrated that he is a member of a protected  
10 class, let alone that any of his rights were violated because of  
11 his actual or perceived membership in any such class.

12 Plaintiff also brings causes of action are for Assault and  
13 Battery/Excessive Force, False Arrest/False Imprisonment,  
14 Negligence, and Conspiracy. Plaintiff failed to respond to  
15 Defendants' Requests for Admission, and has presented no evidence  
16 of any of these violations. (Shahandeh Decl. ¶ 4.) By failing to  
17 respond, Plaintiff has admitted that he had no evidence that any  
18 policies, practices and customs of the Defendants resulted in a  
19 violation of Plaintiffs' rights, or that Defendants authorized,  
20 condoned or ratified any unlawful conduct.

21 Plaintiff's sixth and seventh causes of action are Negligent  
22 Infliction of Emotional Distress and Intentional Infliction of  
23 Emotional Distress. As with his other claims, Plaintiff has  
24 produced no evidence to support any of the elements for either  
25 claim. (Id.) Because there are no genuine issues of material  
fact, summary judgment in favor of Defendants is warranted.

27     ///

28     ///

1 **IV. Conclusion**

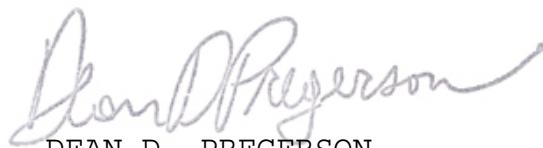
2 For the reasons stated above, Defendants' Motion for Summary  
3 Judgment is GRANTED.

4

5 IT IS SO ORDERED.

6

7 Dated: October 5, 2012



9 DEAN D. PREGERSON

10 United States District Judge

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28